IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10189 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAGHUVANSHI LOHANA MAHAJAN - Petitioner(s)
Versus
JOINT CHARITY COMMISSIONER & 1 - Respondent(s)

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Appearance :
MR RR MARSHALL for Petitioner(s) : 1,
MR PR ABICHANDANI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 02/08/2007

ORAL JUDGMENT

1 Rule. Learned Advocate appearing for respondent No.1 is directed to waive service. The petition is taken up for final hearing and disposal today in light of the view that the Court is inclined to adopt.

2 This petition challenges order dated 20.2.2007 made by the Gujarat State Revenue Tribunal in Appeal No. AA-39/2006 whereby the appeal preferred by the petitioner has been dismissed on the ground of delay by rejecting the application for condonation of delay.

3 The petitioner-Trust was owning an immovable property in the form of Flat No.102 admeasuring 832 sq.ft. in Shri Raj Apartments, Pratap Road, Raopura, Vadodara. The said flat was sold for a sum of Rs.4,80,000/- on 29.11.2005. On 16.02.2006 the petitioner-Trust moved an application u/s. 36 of the Bombay Public Trust Act, 1950 (the Act) requesting respondent No.1 - Authority to grant permission post facto to the sale effected by the petitioner-Trust. Vide order dated 22.09.2006 respondent No.1- Authority rejected the said application without recording any decision on merits because, it appears that the representatives of the petitioner-Trust did not remain present before the Authority.

4 The petitioner carried the matter in Appeal before the Tribunal. It appears that there was delay of 25 days in

preferring the Appeal (though at some places the Tribunal has considered the delay to be of 30 days). The Tribunal has come to the conclusion that the reason advanced by the petitioner for the delay is not an acceptable explanation and hence while rejecting the application for condonation of delay, as a consequence also dismissed the Appeal.

5 Heard Mr. R.R.Marshall, learned Advocate appearing on behalf of respondent No.1.

6 As can be seen from the application for condonation of delay the explanation tendered by the petitioner is that under Section 36(2) of the Act the Decision of the Charity Commissioner under sub-section (1) shall be communicated to the trustees and shall be published in such a manner as may be prescribed, and therefore, the trustees bonafidely waited for the publication of the decision before preferring the Appeal. It is the case of the petitioner that the trustees entertained a belief on the basis of the advice tendered to the trustees by the Advocate engaged by the Trust that the Appeal has to be preferred within a period of 30 days from the date of publication of the decision of the Charity Commissioner.

7 The Tribunal has proceeded on the footing that once the decision of the Charity Commissioner was communicated to

the trustees the period of limitation of 30 days had to be computed from the date of such communication of the decision and the petitioner-Trust was not right in contending that period of 30 days has to be computed from the date of publication of the decision.

8 In the circumstances, it is apparent that the application moved by the petitioner-Trust for seeking post facto sanction of the sale of the property has not been decided on merits by either of the authorities. The question then which is required to be answered is whether the impugned order made by the Tribunal can be justified in law. The Tribunal has not taken into consideration the explanation tendered by the petitioner in its application seeking condonation of delay. In paragraph No.1 of the application a categorical statement has been made that the trustees acted as advised by the Advocate whom the trustees had engaged to represent the trust. In absence of any evidence to the contrary available on record the Tribunal ought to have accepted the explanation and proceeded to hear the Appeal on merits after condoning the delay. In fact the Tribunal has not stated anything as to why the explanation tendered by the petitioner is not acceptable. The fact that the trustees were communicated the decision by the office of the Charity Commissioner was not even disputed at

any stage by the trustees of the petitioner-Trust. Therefore, the Tribunal ought to have addressed itself on the issue as to whether the belief entertained by the trustees was a genuine bonafide belief or was merely an excuse. In absence of any evidence to dispute the veracity of the statement made by the trustees the delay was required to be condoned bearing in mind that the trustees of the petitioner– Trust had otherwise no personal interest in the litigation, more particularly, delaying outcome of the litigation.

9 Hence, the impugned order dated 19/02/2007 made by the Gujarat Revenue Tribunal, Ahmedabad is hereby quashed and set aside. Appeal No. AA- 39 of 2006 stands restored to file of the Tribunal. The Tribunal is directed to decide the Appeal on merits in accordance with law. The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt